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Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

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Report of the Secretary-General

Addendum

United States of America

1. The draft articles of the International Law Commission on prevention marked a positive step towards encouraging States to establish means to address such issues as notification in specific national and international contexts. The principles on allocation of loss are also a positive step towards encouraging States to establish mechanisms to provide prompt and adequate compensation for victims of transboundary harm. The principles incorporate progressive ideas such as the responsibility of operators, the desirability of backup financial security measures, the importance of prompt response measures, and broad concepts of compensable harm. They also stress the importance of national, bilateral, regional and sectoral arrangements to carry out these ideas. The Commission urged States to take national and international action to implement the principles, and we similarly urge national action and State-to-State agreements in specific contexts, as that is what the principles were designed to encourage.

2. The General Assembly has commended both the draft articles on prevention and the principles on allocation of loss to the attention of Governments and invited comments on their form. The United States strongly supports retaining these products in their current form. Both the draft articles and draft principles go beyond the present state of international law and practice, and are clearly innovative and aspirational in character, rather than descriptive of current law or State practice. Both documents were designed as resources to encourage national and international action in specific contexts, rather than to form the basis of a global treaty.

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3. Accordingly, the United States continues to believe it is most appropriate for the work on prevention to remain formulated as draft articles and for the principles to take the form of non-binding standards of conduct and practice. Retaining the current, recommendatory form of these draft articles and principles increases the likelihood that they will gain widespread acceptance and fulfil their intended purpose.

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